

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 746 of 1993

with

SPECIAL CIVIL APPLICATION NOS.759/93, 14489/93, 5410/94,
9359/95 and 2108/97.

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

 2. To be referred to the Reporter or not? : YES

 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

 5. Whether it is to be circulated to the Civil Judge? : NO
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MUJIBA MAGANJIBHAI WAGHELA

Versus

STATE OF GUJARAT

Appearance:

SCA No.746/93:

MR BIPIN P JASANI for Petitioner

MR UA TRIVEDI, AGP FOR MR SP HASURKAR for
Respondents.

SCA No.759/93:

Mr BR PARIKH for the petitioner.

MR UA TRIVEDI, AGP FOR MR SP HASURKAR for
Respondents.

SCA No 14489/93, 5410/94, 9359/95 & 2108/97:
MR MD RANA for the petitioners
MR UA TRIVEDI, AGP FOR MR SP HASURKAR for
Respondents.

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 05/05/2000

ORAL JUDGEMENT

In this group of six petitions, common questions are involved and, therefore, upon request, they are, being disposed of by this common judgment.

The theme and heart of the dispute, in all these petitions, is non-payment of arrears of family pension for the peri petitioners, who are, widows of the deceased pensioners, no doubt, have been granted family pension, with effect from 1.4.92 as per the resolution of the Government. Therefore, the main relief sought by the petitioners is the recovery of arrears of family pension.

The following information in a tabular form will highlight the material facts and the nature of the claim.

Petition No.	Prayers	Service Details	Reasons of non-payment
SCA No.746/93	Claim for F.P.	Service from Since expired on 25.3.50 w.e.f.26.3.50 2.10.93 to and w.e.f. 25.3.50	The petitioners husband is not entitled under 1.10.77. which came into force w.e.f. 1.4.50 F.P.scheme 1972 is also not applicable.

SCA 759/93 Claim for F.P. Service from Teacher's service is and widow 12.4.47 to pensionable only after assistance 13.8.85 as a 1.4.61. As per revised Teacher. Died Pension Rules, 1950 in harness on complete services of not 13.8.52. less than 10 years is required for the benefit of Family Pension.

SCA 14489/93 Claim for F.P. Expired on Complete details of

w.e.f. 1.10.77 22.8.55 other service is not supplied service and not furnished in details not petition. Not covered furnished. under F.P.Scheme.

SCA 5410/94 Claim for F.P. Nothing has Not entitled.

w.e.f. 1.10.77 been mentioned about the service period i.e. date and years.

SCA 9359/95 Claim for F.P. Expired on Complete details of w.e.f. 1.10.77 11.9.52 service is not supplied service details and not furnished in not furnished. petition. Not covered under F.P.scheme.

SCA 2108/97 Claim for F.P.

w.e.f. 1.10.77 Service from Required service record 26.12.42 to not furnished. Not 11.3.50. Died entitled for F.P. as on 18.6.58 per Revised Pension Rules, 1950 which came into effect from 1.4.50.

The petitioners have relied on the Pension Scheme of Primary Teachers, which was introduced with effect from 1.4.61 and also the decision of this Court rendered in Kamlaben Govindlal Seth v. State of Gujarat, 30(2) GLR 1068.

The petitioners, who are, widows of the deceased pensioners are, admittedly, not paid the arrears of family pension for the aforesaid period. All the deceased husbands, except the husband of the petitioner in SCA No.5410/94 expired after the revision of Pension Rules, which came into effect from 1st April, 1950, whereas, in case of Special Civil Application No.5410/94, the petitioner's husband expired in the year 1939 and, therefore, governed by Pension Rules prevalent at the relevant time. It is, therefore, contended that she is also entitled to pension along with other widows. The petitioners have, inter alia, contended that even without exercising the option, all are entitled to family pension in view of the settled law on the subject.

The respondents have denied the arrears of pension from 1977 to 1st April, 1992, contending that the deceased pensioners-husband of the petitioners-widows

had retired or died before 1st April, 1961. However, the cut-off date for the entitlement of family pension is also challenged and it is contended that the pensioners are a homogeneous class and therefore, cannot be deprived of the benefit of family pension.

The respondent authorities have, also, contended that the decision of this Court relied on by the petitioners extending the benefit of Family Pension Scheme to those Government employees, who, retired on or before 1st June 1971 and those who were alive on 1st June, 1971, who had opted out of the new Family Pension Scheme 1972, would not be applicable and attracted to the group of petitions on hand. It is, in this context, the Government has declined to give benefit of Family Pension Scheme dated 19.5.89 effective from 1.4.89. The Government decided to give benefit of Family Pension Scheme 1972 to all those eligible members, including dependents, who are, now, covered under orders of the Government with effect from 1.10.77 as per the Government resolution dated 11th May, 1990. Therefore, family pension, according to the respondents, has been given to dependents of the Government employees, who were the employees of the successor State prior to 1.5.60 and rendered the service in Gujarat State with effect from 1.5.60 and retired or died while in service thereafter. As per the circular dated 3.8.1992, family pension is admissible with effect from 1.4.92.

The respondent authority have also decided to make payment of Family Pension to the sons of deceased Government employees upto the age of 25 years and daughters upto the age of 35 years or marriage, whichever is earlier. Initially, lump-sum amount of family pension was paid. Thereafter, as per the resolution dated 24.3.92 as well as the circular dated 3.8.92 of the Finance Department of the Government of Gujarat, in case of employees who had retired or expired before 1.5.60, their heirs are entitled to family pension on and from only 1.4.92 as per the contention propounded by the respondent authority. Therefore, the defence of the respondent authorities, in this group of petitions, is that the cases of the petitioners do not fall within the defined parameters and therefore, the petitioners are not entitled to family pension arrears from 1.10.77 to 31.3.92.

In course of submissions, on various dates, in this group of petitions, both sides have relied on several Government resolutions and circulars in support of

their contentions. Learned advocate appearing for the parties are, dispassionately, heard and they have, also, taken this Court through some of the decisions.

Government servants, as such, started getting pensionary benefits when the revised pension rules came into effect in the year 1950, which came to be, later on, liberalised with the help of various Government Resolutions. According to the old pension rules, like that, prior to 1972, a Government servant, who, had completed 10 years of service were only entitled to family pension and, that too, say, upto a maximum period of 10 years after the death. Later on, Government deemed it expedient to further liberalise the scheme, as a result of which, 1972 Family Pension Scheme was brought into operation with effect from January 1, 1972.

Clause 2 of 1972 Government Resolution, eventually, show that "Family Pension" under this scheme will be admissible in case of death while in service, on or after 1st June, 1971, provided the Government servant has completed a minimum period of 5 years' continuous service on the date of death. Family pension will also be admissible to a retired Government servant in receipt of compensation, invalid retirement or superannuation pension and who has retired on or after 1st June, 1971 and who has died or who may die on or after the said cut-off date. By virtue of resolution dated July 1987, the Government further relaxed and removed the limit of five years service which was there in the 1972 scheme. The plea of the respondents is that clause 4 of the said Government Resolution prescribes parameters for entitlement of the benefit, whereby, a Government servant should be in the service on January 1, 1986 or thereafter. In clause 5 of 1972 Pension Scheme, it is provided as follows:

"Every Government servant eligible to the benefits of the above scheme will be required to surrender a portion of gratuity, where admissible, equal to his two months 'pay' subject to a maximum of Rs.3600.00 Where an Officer governed by this scheme retires, as a bachelor who has not adopted any child, no deduction from his gratuity will be made. In cases where the gratuity admissible is less than two months' pay, the same will be resumed by Government against the family pension benefits admissible under this scheme."

Even the above provision was, subsequently, taken off by a Government Resolution dated 17.10.77 and this was brought into effect from 1.10.77, like that, to be applicable to those Government servants who have retired on 1.10.1977 and thereafter.

Many persons and petitioners had made grievance further and in order to ameliorate and to help such persons, the Government relaxed the aforesaid provisions of the cut-off date. In the result, now, no Government is required to deposit two months pay irrespective of the date of retirement. Pursuant to Government Resolution dated 19.5.89, the arrears were required to be paid with effect from 1.4.89. However, in view of the decision of this Court in Letters Patent Appeal, it was decided that the arrears were to be given not from the date of the death of the employee, but from 1.10.77.

There is no dispute about the fact that persons who are claiming Family Pension in these petitions were dependents of the Government servant who retired before 1.5.1960. As per the Government Resolution dated 24.3.1992, the Government has resolved to give the benefit of family pension to the widows or dependant of deceased Government servant irrespective of the fact that whether he has served the State of Gujarat or not. However, the cut-off date according to the said Government Resolution is 1.7.1992, which, subsequently, came to be amended and substituted as 1.4.92.

There is no dispute about the fact that the petitioners are given family pension with effect from 1.4.1992, after filing of the present petition. The cut-off date fixed by the respondent authority for the purpose of payment of family pension is 1.4.92. It has been, therefore, professed and pronounced that the Government has been liberal, lenient and socially service oriented so as to provide a new class of family pensioners so that they could be afforded with the benefit of pension. In that, it is also contended that the Government has considered the financial resources of the Government. In short, the respondents' main plank of defence is that those who have superannuated prior to the date of existence or enforcement of the Rules could never be permitted to claim pensionary benefits or family pension as a matter of right.

In the present group of petitions, the Government

servants were not at all entitled to pensionary benefits as per their terms of appointment, as contended by the respondents. In this context, therefore, it is stated that the cut-off date of 1.4.92 is logical and rational. Since the respondent authority has started giving effect of family pension in so far as the petitioners are concerned, no further benefit could be given with effect from 1.10.77 upto 31.3.92, in view of the Government Resolution dated 11.5.90. Not only that it has also been pleaded on behalf of the Government that the interpretation which is sought to be made by the petitioner, if accepted, would lead to an anomalous situation and there shall be enormous burden on the Government exchequer which was not in contemplation of the Government while giving such benefit.

Be it noted that the concept, philosophy and rationale behind the benefit of pension is not only historical, but also humane. It cannot be gainsaid that in view of the settled proposition of law, the pension is not a charity or grace by the master or the Government. It is a right and family pension scheme is also a benevolent and benign scheme to give effect to important principles laid down in the directive principles of State Policy in Chapter IV of the Constitution by its Founding Fathers.

It is heartening to note that from the affidavit in reply filed in different petitions and manifested by several Government Resolutions and Circulars, attitude, approach and the assessment of the Government has been liberal, lenient and more social oriented. Needless to, reiterate that right from Preambulary Promise to the liberalised provisions, incorporated in statutory provisions and executive resolutions, chronicle and contours of the Pension and Family Pension Schemes, the same have been formulated, elaborated, liberated and highlighted as a policy of the Government since the trinity of equality, social, economic and political freedom and justice to all, so as to project, promote and proliferate and pioneer the doctrine of Welfare State in a Democratic Republic secular governance. It is, in this context, when we have wedded to a concept of social justice, social Welfare State and equal justice to all, the philosophy of Pension and Family Pension Scheme have been evolved and implemented so as to translate the Constitutional promise into reality. Even if the authority feels strong about the claims of Family Pension Scheme benefits by the widows of deceased pensioners, this

Court is unable to resist the temptation of mentioning that the petitioners deserve sympathetic consideration, not only on the ground of avowed policy of the Government, articulated and professed in the Constitution, as stated hereinbefore, but also keeping in mind the following special facts and peculiar circumstances emerging from the record of the present cases.

- (1) The petitioners are widows of deceased pensioners, who have served by their sweat and blood, one or the other Government or its instrumentality;
- (2) The petitioners-widows are almost in the age group of 75 and above, which means that they are at the dusk and December years of their life.
- (3) For whatever reason, they have been waiting for the adjudication of their claims by the Court of law and, that too, under Constitutional provisions for a spell of more than 12 to 14 years.
- (4) Apart from other Constitutional goals and mandates, the underlying purpose and design of the directive principles of State Policy incorporated in Chapter IV of the Constitution, indubitably, demand and command that a class of people, which is not only weaker and vulnerable, but also crossing the normal mortality age in so far as the senior citizenship is concerned, apart from their unfortunate widowhood, deserves sympathetic consideration.

In the light of the aforesaid facts and circumstances which are peculiar in nature and special in character, while viewed in the light of the statutory and Constitutional set up, and the social welfare doctrine policy of the State, liberal approach of the Government of Gujarat, policy and philosophy behind the social security scheme, and the resultant impact on the financial burden, *prima facie*, appears to be not very heavy, this Court deems it expedient, without further, any other divulgence and diversion, to direct the respondent authorities to consider the writ petitions as representation and consider the claim of widows for the recovery of arrears of family pension scheme benefits for the period commencing from 1.10.77

to 31.3.92 afresh, objectively, and adjudicate their claims, expeditiously, and in the event of finding that there is no statutory entitlement, then, in the alternative also consider their claims and cases in view of the aforesaid peculiar facts and circumstances as a special case, and consider whether reasonable amount by way of lumpsum or otherwise could be paid with or without reasonable amount of interest, without treating as a precedent or not. Of course, it is sincerely, and seriously, hoped that the authority concerned shall bear in mind all the aforesaid facts and circumstances, the proposition of law propounded, design and spirit of social security object and policy and philosophy of Family Pension Scheme and such a hope shall not turn out to be a cry in the wilderness. With this concluding observation, these petitions are disposed of.

Learned AGP will also inform the authority concerned to take early decision, either as a part of policy decision or a special decision since all the widows have almost crossed more than eight decades of life, and preferably before the end of 15th August, 2000, when we shall have marched more than 52 years of voyage of independence. Rule is made partly absolute with no order as to costs.

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(vjn)